At and near the capital

AT AND NEAR THE CAPITAL: FAMILIAR LETTERS TO A YOUNG AMERICAN FROM AN AMERICAN WHO IS NO LONGER YOUNG

A SERIAL.—NUMBER ONE.

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By Robert Bruce Warden

A SERIAL.—NUMBER ONE.

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FOREWORDS.

Some Foreshowing, in addition to that effected in the opening Letter, seems to me dictated by entirely sound considerations.

I was at the National Museum, this afternoon. The new inspection that I made of it at once enhanced my interest in what is undertaken in the Serial here opened, and gave greater depth and force to my determination not to fail for want of thoroughness in scrutiny in any way.

It may be well to add, that the character and compass of the work are designed to be such that the largest as well as the minutest matters are to be presented with at least uncommon effort to advance good objects.

Let me make a statement that I own to be quite perilous.

The book is to do what it can for a correct conception of the Capital and the connected Land. The paramountness of the Nationality that is—whatever Washingtonians in general may think (or think they think) about the matter—in all parts and particles—in every jot and tittle—of the District of Columbia—is to be carefully set forth and earnestly insisted on, when I shall reach the subject in the body of this offering.

The settled residents of Washington do not consult their real interests—they become hinderers of their own advancement—when they claim the Offices on a ground completely at discord with the Constitution and with the nature of things, as, quite demonstrably, is the ground, that the alleged “Home-Rulers” rather noisily assume.

All talk or print about “Home Rule” at the Seat of Government of the United States is. I am very sure, much worse than waste of words.

Another perilous but proper addition to the Foreshowing in Letter First, is this:

Whether as to the Senate of the United States; the Congress as an entirety; the Judiciary; the Accounting Officers; or other Official Beings; I shall in this book maintain, that the President is sacredly obliged to defend against diminution the *discretion* of his Public Trust. This means, of course, among other things, that I shall say, in substance, and try to prove, that as between the President of the United States, on the one hand, and the party of Senator Edmunds, on the other, the President is in the right. But it means more than this. It means that, according to the views to be here advocated, the President is, in all respects, obliged to stand for all the powers and discretions of his Place. This volume takes in this particular, the 4 ground taken by me, as to Martial Matters, in the case of Capt. Robert H. Montgomery, in the Court of Claims.

But, on the other hand, being an Independent, holding the Political Principles of a Jeffersonian (not *Jacksonian*) Democrat, I advocate no exaggeration of the Presidential Power and Discretion.

If the Government would give me what it wrongly holds of mine—my *money* —just as clearly mine as is my house—I would, in the sum of above six thousand dollars, be readier than I am for the pecuniary outlay involved in the publication, through *The Ernest Institute,* of this work and of two other Serials; one, *A Forensic View of Man and Law;* the other, *A Book of Type and Types;* both just to go, for the first time, into Market.

Robert Bruce Warden.

March 13, 1886.

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AT AND NEAR THE CAPITAL: FAMILIAR LETTERS TO A YOUNG AMERICAN FROM AN AMERICAN WHO IS NO LONGER YOUNG.

I. THESE LETTERS.—FEATURES OF THEIR SUBJECTS.

AT AND NEAR THE CAPITAL, dear Charlie, You and I have made some studies most important to us both, but, taking into view the difference between your age and my age, probably of larger practical momentousness to You than to me. Your age comprises only five-and-twenty years, while mine comprises two-and-sixty.

Years have passed since I commenced to write a book like this. I have been variously hindered in the composition of that volume, and I substitute for it, (for reasons which need not be stated,) what is offered here. It is an offering of Open Letters, meant for publication. It may be regarded as, in no slight measure, due to the joint studies which I have just spoken of, although it also represents investigations made without your help.

Before proceeding farther, let me make an explanation, which I deem not unimportant, in relation to the farther composition of these Letters—namely, that there is to be free reproduction, in this book, of matter which has been in print before, though it was written by myself. The repetition seems to me decidedly advisable, for several quite thoroughly considered reasons which, it seems to me, need be explained, minutely, to yourself alone. Something about them must, however, manifest itself as I proceed.

Because of what, perhaps, may be regarded as a set of *accidents,* this book, dear Son, is to be one of those “greatest efforts” which are very often talked of now-a-days. Receive it with a fitly sympathetical consideration, but with no undue indulgence.

2

A defender of my works and ways when they were worse than savagely assailed—in 1874—placed at my disposal an elaborate paper, in the course of which, after setting forth some letters I received from Salmon Portland Chase, he said:

“The man to whom these letters were written had been an intimate acquaintance of Mr. Chase for years and years, and if ever one man had an opportunity to know another fully, surely Mr. Chase ought to have known Robert B. Warden. They had both been

prominent in Ohio. Sometimes they were together, and sometimes opposed, in politics; but, no matter whether co-operating with each other or fighting on opposite sides, there never was a time during the acquaintance of these two men when they did not respect and admire each other. There never was a time when either of them attributed to the other anything but honor and ability. But suppose, for the sake of the argument, that Mr. Chase during the last few months of his life was not possessed of the power of discrimination necessary to select a biographer; suppose he might have been deceived by some newcomer; what explanation is there to the high regard and affection he entertained for Judge Warden, far back in the past? In 1857, Mr. Chase invited Judge Warden, as one of several distinguished speakers, to address the citizens of Ohio in his behalf."

In the same paper are the sentences:

"Enough has been shown above to clearly indicate how shallow have been the pretences urged against Warden, and how miserable and contemptible it has been for the press, especially that portion of the Ohio press which took sides against him, to turn their backs upon one who claims not perfection for himself, but who, nevertheless, is an able and an honorable man, whose own unaided efforts, when he was yet a young man, secured for him a seat upon the Supreme Bench of Ohio. His decisions while a Judge of that Court are also 'accessible' to Mr. Schuckers or any one else who desires to see whether he was fit to fill the same seat that had been filled by Nathaniel C. Read, John A. Corwin, Allen G. Thurman, William B. Caldwell, and Rufus P. Ranney."

When I was a Member of that Court, I had but thirty years of age; but having, now, more than double than age, I point to what I uttered as a Judge in that tribunal, and also to what I judicially uttered in the Court of Common Pleas, at Cincinnati, before I was a Judge of the Supreme Court, as establishing, for me, at least that I need not seek indulgence here. I may—I do—need sympathy, dear Son, but not indulgence, I believe.

The work is not to be, in any sense, a *law book,* though it is to freely offer matter of a legal cast, on fit occasion.

Near the Capital of the United States, dear Son, there is a spot that has, one says, great wealth in point of “air and view.” It is 3 not far from the grounds of St. Elizabeth's; but it is not within them. Nay, it is not really on their part of the Anacostia Heights at all. The situation of it is on a fine ridge on which are several residences. One is that of Mr. Mandeville Girard Lee, well known to journalists, and formerly a journalist himself. Another of the residences clustered here belongs to worthy Dr. Grant, also quite generally known in Washington, and it is occupied by him. Another dwelling place belonging to the cluster, at the extremity opposite to that held by the site of Dr. Grant's house, is owned by Mrs. Belva Ann Lockwood, known to fame, but is not occupied by her, but by a family named Clarke. The house in which I write is owned by Mrs. Emily Lee Sherwood, widely, but not widely enough, in reputation as a ready and a charming writer, and is occupied by her husband and herself. As guest here, I have passed the time since the 28th of July last, this blessedly bright morning being of the twenty-first day of February, 1886. I came on the day first named to pay a visit of an hour or two. But, my dear Daughter—your beloved Sister—Mrs. Clifford Warden, and her charming Ethel,—my bewitching “boss” of a Grand-daughter—were then here as guests, and I was asked to stay with them overnight. I more than willingly complied; and I have ever since dwelt here, unceasingly becoming more and more delighted with the spot.

It was while seated just where I am seated now, that, on the 24th day of last September, I composd for *A Book of Type and Types* the sentences ensuing:

“What a lustrious day this is! The place, moreover, where I write, is one of the choice places for the joys of Sight. Perhaps, there is not, *on this earth,* a set of views, the type of which is finer than the type of what is under view where I am writing.

“Let me make the passing record, that I write, not in my own so dearly charming house at the corner of Washington Circle and New Hampshire avenue, in what my typonomic studies (a) amply warrant me in calling matchless Washington, but in the dwelling of my.... friends, the Sherwoods, on the Heights of Anacostia. The spot is, I am certain, unsurpassed in the fine wealth of landscape-views, including objects and phenomena. The water-views are wondrously in harmony with land-views, and Nature is here in association with some of the very noblest forms of Art.

(a) Elsewhere, I make this explanation, not to You: “The term, *Typonomy,* I must acknowledge, is of my own coinage; but it seems to me an obviously fit name for the exceedingly important science, that cognizes Type, organical or inorganical, throughout its wonderful variety and reach.” To this it may be well to add right here: “ *Toponomy* appears to me the obviously proper designation of the cognate science that cognizes local influence on life and character throughout the world. To both the sciences referred to, much attention has been, and is to be, devoted by the Ernest Institute.”

4

“In presence of such scenery, how can I fail to strive, with good effect, for a new hold of life?

“In passing vessels—steamers and sailers—and in railway phenomena, there is an animation never rushing into sheer excess, and always free from too long pauses. Is it possible to make too much of it, O lover of the glorious in landscape?

“In the presence of these views, I once more find myself—I *often* find myself—repeating Moore's fine lines:

“‘Thou art, O God! the life and light Of all this wondrous world we see! Its glow by day, its smile by night, Are but reflections, caught from Thee! Where'er we turn Thy glories shine, And all things fair and bright are thine!’

“How, thinking so, and feeling so, on this devoted day, could my remembrance fail to call up the peculiar lustrousness of your sweet Mother's loveliness, as it delighted me in the days of her transcendent beauty of physique?”

That sentiment is fully reproduced, this day, all wintry as it is. I see, again, your “Mother's loveliness, as it delighted me in the days of her transcendent beauty of physique.” I trace her through the joys and sorrows of her changeful life, even unto the close. How proudly and how thankfully I remember her example to her Children and her Husband, though she was so little satisfied, herself, with her demeanor, nothing I could say could serve to even intimate.

Her last eleven years of life were passed in Washington or near it, save the ever brief times of her resort to other places for the sake of the good health that she somewhat too anxiously endeavored to make hers, but that so tryingly eluded her, as if in malice, Washington, which pleased her from the first, became endeared to her most deeply ere she passed out of this life, at eight-and-fifty years of age.

Here is a Record, which must always have for me a special, tender, holy interest, although I drew it up:

“This Open Letter will go to You, at Washington City, where we have our simple—I will not say humble—Home, and from New Windsor College, Maryland, where I have been almost half a month. I lectured here last Friday evening. I shall hereafter criticise *the Speech,* somewhat, if not the Speaker, also. I can do so, fairly, can't I, now?

“Can not there be here passing mention of the presence of your ever suffering yet never wholly unenjoying Mother, my dear Mother-loving Son?

“My Better Self was one of the decidedly attentive Gentlewomen, 5 who made up, in numbers, say, a half of the audience that heard that utterance of mine. I shan't deny, if I be charged with having very much desired to find her pleased with the Discourse: and I at

once acknowledge that the praise she actually gave my effort, was extremely sweet to the Discourser. I insist, love of one's Wife has not yet come to be downright Shame.

“An incidental tribute to our Home came out, off-tongue, in that discourse of mine. Next day, Somebody was heard saying words importing an intent to have ‘the brightest Home in Washington;’ and I believe she *can* and *will,* triumphing over both Disease and Medicine.

“Your Mother has no wish to join the ‘Carriage-People’ as a class of Rank-and-Riches-Idolizing Followers of Fashion; but she does wish to be soon supplied with the long-talked of Restoration, in the way of modest Carriage and good Horse: and she must soon have both.

“Her Horse-Love is profound. All Hail to it say *I!* ”

How your sweet Mother's plans respecting “the brightest home in Washington” were rendered null, it would be very painful and it is unnecessary to relate. Enough to be enabled, somehow, to survive her loss, at such a time, when she, herself, had so much hope and even expectation.

I remind You of my words: “Do justice to the Alma Mater of your education, if You can. I question whether there has ever been a happier Home-Institute than it has generally been, although, perhaps, no Home was ever more severely tried than ours has often been. The School I have so long kept up in it, is largely occupied with *Laws,* but hardly less with *Manners* and, therefore, with *Character.* ” Your Mother's part in keeping up that School at Home, may have been more important that it seemed to You. To me the great momentousness of her cooperation with me in the educative life of Home, grows clearer every day.

I see beyond all question that, without expending much in a *pecuniary* way, she could, indeed, have made the house we had so lately made our own, if not “the *brightest* Home

in Washington," at least as *bright* as any other Home in this or any other Capital, in this or any other land.

6

And yet it would have been no little thing to do, dear Son! Consider what a thing "the brightest Home in Washington" would be.

You have been living at the Capital, except for a few months, in 1874, ever since August, 1873. You have been *studying* the Capital, and its vicinity, with me, from the time of your coming here to dwell, unto this day. You *know* the Capital, quite thoroughly, if anybody knows it thoroughly.

You have made topo-typonomical examinations of this place and places near it; and your *capability* for making such examinations is a rare one, in that You both draw and paint, with excellence, and yet have a mechanical facility, combined with an uncommon taste and faculty for business.

You needn't blush, dear Charlie. Every one who knows You, would give You such praise as that I have just given, and would even largely add thereto.

Your knowledge of the Capital, perhaps, is on the whole, about the equal of my own, although I know more of it, in some respects, than You do, and, on the other hand, You know more of it, in some respects, than is yet known to me. But You need not be told that I, myself, have (mainly by the topo-typonomic method,) made quite careful and continued studies of the City and of places near it, including Georgetown, Alexandria, Bladensburg, and Mount Vernon. I shall tell, somewhat, the story of the studies just alluded to.

About the Homes of Washington I have, in various ways, informed myself with an almost excessive care, in spite of—or it may be, not a little aided by—my habits as a "Stay-at-Home." *Association* has much favored me in this respect. Among my close associates have been Ladies and Gentlemen, both, who are decidedly "Society People;" and, though

I, myself, have never been connected with the Press at Washington, I have had not a little intercourse with the “Press Tribe,” because of my relations and conditions. I have very much desired to comprehend completely the Home Life of Washington—no easy thing to comprehend, You need not be assured.

My hygienic, economic, and aesthetic studies, in due combination with considerations which belong to ethical research, have not, it seems to me, been unrewarded by at least a fair success. Therefore, I purpose, in this book, to treat, with none but fitly delicate restraint, of the Home-Life that is to be discerned in Washington.

Particular attention is to be devoted to the Home-Life of the amiable, admirable Wirt. It will appear to have been an absolutely charming Home.

7

In treating of Home-Life at Washington, I shall take notice of these words of President Cleveland, in his Inaugural:

“It is the duty of those serving the people in public place to closely limit public expenditures to the actual needs of the government, economically administered; because this bounds the right of the government to exact tribute from the earnings of labor, or the property of the citizen, and because public extravagance begets extravagance among the people.”

8

How full application of this doctrine would affect Official Salary, in Civil Life and Martial Life, it will be found of interest to carefully inquire. But I am ready, now to say, that I expect to justify these words of mine addressed to You last year:

“We very naturally take a lively and large Interest in the high Cause of *Arms and Law.*

“I cannot think I make too much of War and Warriors, although I deeply feel that they are often (as in Grant's case) most ridiculously while most dangerously overprized.

“Unending peace has not arrived. The Warrior, as well as ‘the Schoolmaster,’ can be seen ‘abroad.’ There was a great extravagance in Brougham's often-cited spouting:

“‘Let the soldier be abroad if he will; he can do nothing in this age. The schoolmaster is abroad; and I trust to him, armed with his primer, against the soldier, in full military array.’

“Just think of what the Soldier has been set to do, or to attempt, since Brougham spouted the just-quoted words!

“According to clear nomologic principles, the State is interested in good Type-Production and in Health, wherever life appears, be it of Plant, of Animal, or of Man.

“The State, moreover, is, quite demonstrably, obliged by Natural Organic Law to strongly use whatever Force may clearly seem required to make that interest more than a name. However conscious of its Fallibility, the Government is bound to carry into full effect its Laws, and Judgments, and Decrees.

“Law needs the more or less direct support of Arms.—Arms can *be* near or far; but they must be, and must be known to be available.

“The Government is bound to do all that it reasonably can, for International Good-Will; but it should not seek ‘Peace at any Price.’ The Nation must, at any cost, perform its International Devoir, embracing rational concern for Honor, Health, and Wealth.

“A Government conditioned and related as is ours, must have an Army and a Navy, worthy to be so called, which should be neither underpaid nor overpaid.

“They are not, and they never have been, overpaid.

“But are not Martial Officers, on Land and Sea alike, deplorably in love with Social Rank?”

My views and sentiments, in this respect, are far from likely to be changed. They have been very carefully and thoroughly deliberated.

At Fortress Monroe I wrote to You a letter that contained the words:

“Where I am writing, on the eighteenth of November, 1884, at about nine o'clock, A. M., after a quite hygienically light breaking of a sanitary Fast, I may well think much of the Social Rank, accorded, or at least afforded, by our customs, to our Martial Officers. These 9 Gentlemen are either of the Army or of the Navy. Types of both the Services were at the tables in the Breakfast Room, a little while ago; and from the window of my private room I see a Naval Vessel with three fluttering Flags, kept active by the breezy morning; and I also see the Rip Raps.

“I am in resort at *The Hygeia Hotel,* at Old Point Comfort, Virginia, near *Fortress Monroe* —an invalid quite seriously indisposed, though wholly unalarmed. My hygienic cue is to be just as cheerful as I can, and I shall ‘mind my cue’ in that behalf.

“According to the dramatic Colonel Damas, the trade of Soldiers is to make Widows, not Wives; and yet what favorites the Soldiers generally are with the dear Sex! According to the Sex, in general, high Social Rank is an unquestionably proper attribute of Martial Officers.

“I have delivered many proofs, in my Profession and beyond it, of a practical appreciation, warmed by an affectionate regard, where Martial Men and Measures are involved. I may not live to work out much of what I am engaged in trying to effect for *Better Arms and Law, in their relation to each other and to other objects of high Public Interest;* but You have been instructed in my views and sentiments in this respect, and, heartily accepting them, will carry on whatever proper work for them, on my part, may be left unfinished when I follow your sweet Mother to the Tomb.

“Among the services I very much desire to render to our Arms, is contribution toward solid Rectification, Purification, and Elevation of the views and sentiments of Martial Officers, whether in the Army or in the Navy, touching Social Rank.

10

“I put much study on some aspects of the subject, when I gave the necessary leave to your so early-fated Brother, Ernest, when he volunteered for what he deemed, as I did, the high cause of Social Order and of Law.

“I *could* not go with him. I was prevented by a fit devotion to his Mother and by other things, which have been very carefully as well as candidly explained to You—among them, my condition, physically; but no hart ever panted for the fountains of water more than I desired to be with Ernest in the Army of the Union. The regret I felt, on finding to go with him was made, by my stern Fate, a clear impossibility, was never lessened while he lived, and has not been diminished since, and must remain with me forever.

“Ernest, volunteering as a Private, fairly won the moral right to a Commission, and was promised one. The promise was, quite culpably, broken. When he fell, at Champion Hills, with what proved mortal hurt, he was a Non-Commissioned Officer, although performing the Devoir of a commissioned one.”

While Mr. Arthur was Chief Magistrate I said to You:

“ *Official* Social Rank, in all its modes, is very bad for all concerned, although, I am aware, out *ton* -led President appears almost to fancy that he *represents* American ‘Society,’ at his grand Eminence, as President of the United States!

“The Governmental and especially the Diplomatic Influence of Riches and of what assumes to be the Best Society, has, for a long time, frequently engaged my thoughts; and now I very clearly see that no Official ought to be encouraged to live Snobbishly.

“Must Diplomatic People be excepted?

“Ever since I first saw *The Irish Ambassador,* some of the chief functions of Diplomacy have oft engaged my thoughts. Not long ago, I hazarded the proposition that Diplomacy is not the *Art of Dining:* I go farther, now: I venture, now, to represent Diplomacy as not the Art of *Shining.*

“Legal Youngster! If we must have highly dressed Diplomacy, why might n't it be well to change the Gender of Diplomacy, henceforth?—Does not THE SEX outshine the Other Sex in all the modes of lustrous and luxurious Life?—But, seriously, all our Public Life ought to be disinfected of all Snobbery.”

11

But I have also said to You, and I expect to have the right to say to You again, and in this book:

“There is here no appeal to nonsense. Not a word—not one—is here, or has been elsewhere, said by me, against Improved Society that Custom rather serves than sways, and that is undelightful to the Snob alone.”

That Life at Washington, and that much of the Life in its vicinity, may be at least as *enjoyable* as any other life within our knowledge, has been made by my experience and observation both completely clear to me. Of this I cannot doubt at all; and I have reason to suppose that You and I agree in this respect, right heartily.

A portion of this volume will be found to be made up of Sketches and of *Anecdotes,* especially of Presidents.

In coming to our Office from my present dwelling-place on Anacostia Ridge, I pass, by car, the *Botanical Garden,* at the foot of the Capitol. Thus I am very frequently reminded of all the Plant-Studies of my life, but more particularly those which I have made at Washington.

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I lately formed an arrangement, in the nature of a Club-Formation, contemplating very frequent visits to that Garden, when the greatest leisure comes to Washingtonians—less frequent, meantime. I would like to have You and your Sister, Lucy, (a) join the Semi-Club. The time that You may find yourself able and inclined to give to study of Plant-Life, will not be wasted, my dear Son.

(a) Mrs. Clifford Warden.

The grounds and building of the *Agricultural Department* are to be included in the visits of the Semi-Club aforesaid. You and I made much of them in our botanic studies of some years ago. I had, indeed, a special liking for the place; and so apparently had You.

The place and what it helps to teach possesses, in one point of view, a quite decided nomological concern.

What do I mean by *nomologic interest?* With reference to general Readers let me carefully explain.

I said to You, some years ago, and now I say again to You with emphasis: “A Lawyer ought to be a *Thinker.* He ought not to be a mere *machine.* He ought not to owe more to his hands and feet than to his brains. He ought, in general, to make haste very slowly, and to look right well before he leaps, and to take care not to leap until he comes to the stile, and then to leap, with the proper vigor, neither backward nor sideward, but just forward, as Juridic Art requires. 12 He ought to be completely master of that Art and of the Science, out of which that Art proceeds. Consider, for a moment, the grand compass of the Science, comprehending, not alone the actual provisions of the Law, but the Philosophy of Law and so of Life, itself, as it is manifest in the diversities of Type and State. That very comprehensive Science has been, happily indeed, distinguished as *Nomology.* ”

My not yet finished little book, *A Legal Catechism,* teaches in this fashion:

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“ *Question.* Is the word Nomology in use?

“ *Answer.* It stands in Worcester as follows: ‘ Nomology, *n.* [Gr. [*nomos*] a law, and [*logos*] a discourse:] The science or knowledge of law, legislation, and government.’ It seems, the word *Nomography* is older than the word Nomology. Nomography has been used to designate a treatise on the law. Nomology is an equally good word. It is, indeed, more comprehensive in natural signification. It designates all that is denoted by the term Polity, considered as the name of a science, and by the term Jurisprudence. One may say it embraces the entire contents of Jural Science, and even goes beyond those contents.

“ *Question.* But why introduce the term Nomology?

“ *Answer.* For one answer, because it is a word of the cosmopolitan order, like Philology, Etymology, Physiology, etc. It belongs to the class of words understood at first sight by students of all the idioms in use throughout the most civilized countries of Europe and America.

“ *Question.* You have used the word *jural;* is one free to use that word?

“ *Answer.* Undoubtedly. That term, though newly coined, has already gained considerable currency. It quite felicitously corresponds to *moral,* having been derived from *jus,* as moral was from *mos.* One may say that a section of Nomology surveys the Jural Order, as contradistinguished, on the one hand, from the Moral Order, and on the other hand from the Religious Order.”

My dear Charlie, there is reason to regret that the endeavors I have variously made to bring into free use the singularly happy term, Nomology, have not had more success. I did not coin the term; and all I have advanced in favor of it has been free from partiality for it, as well as free from prejudice against any other word whatever. It is undeniably a term that was well introduced; and my adoption of it was completely warranted, in all respects.

The Lecture I delivered at New Windsor College, Carroll County, Maryland, contained this language: “Dictionaries have not yet presented the term *Nomologian;* but some of them have used the term, *Nomology.* I know not why Sir William Hamilton limited the term, *Nomology,* to the science of the laws of the Mind—to 13 Rational Psychology; and I was quite surprised to find the limitation followed by Webster. Worcester accurately indicates that Nomology is the fit name of the most comprehensive doctrine in respect to Legislation, Law, and Government. I have, myself, defined it to my Legal Pupils, and to many other persons as the doctrine that relates to Legal Principles and Legal Facts alike.”

These words were put to press by me, some years ago:

“The Ernest Institute discriminates a *Popular* Nomology from a *Professional* Nomology. The former has been treated as comprising so much of Jurisprudence and State Science as may well be a part of general teaching, especially of academic teaching. In the Ernest Institute, it has been taught in combination with Professional Nomology. This is Nomology reduced to system for the special benefit of Lawyers.

“Why Nomology, in the familiar form, should not be interesting to all educated persons, I can not conceive. It ought to have, at once, great forward movement.

“Neither it, however, nor Professional Nomology, is in a creditable state. The prospects of the science, generally speaking, are, just now, not at all of the character called booming.

“I have tried to give some notion of the nature and the compass of Nomology. But I do not imagine that the exposition is complete. I can not even hope to make it ample in this little book. Enough, however, has already been set forth to warrant the suggestion, that *every College ought to have a chair of Popular Nomology, and all the minor Schools should teach its principles.* ”

The present work, (which will be found to furnish as complete a picture of the Capital, and some near places, as is to be found in any book within my knowledge,) is, of course, not to

be merely a contribution to a Popular American Nomology; it is, in many ways, to be much more than such a contribution; but it is intended to effect no narrow yielding to the just-mentioned form of inculcation. It is to describe the Legal System that has its chief seat at Washington, and it is also to describe the local Legal System of the District of Columbia.

I have, in one of my many far from perfect expositions of Nomology, remarked:

“The science is unquestionably deep as well as wide.

“Among the things belonging to it is a very large division of Biology.

“Biology, at large, is nothing but the science of life. My studies have induced me to mark out a Nomological Biology, cognizing not alone the phenomena which are considered normal, but also the phenomena which are considered as within the range of abnormality. My judgment is that Legists generally ought to pay to Nomological 14 Biology no slight attention. But I do not think that they alone should study that Biology. It is of universal interest to educated persons, and it has a special interest for Medical Men. It comprehends Forensic Medicine and Medical Police.

“How much of Medicine does it include? I am not ready with an answer satisfactory to the respondent.

“The peculiar exigencies of my life have led me to explore the whole extent of Hygiene, considered as including Medicine rather than as merely forming part of the science that gives precepts to the Healing Art. Perhaps, I put too much under the head of nomological cognitions. Public Hygiene, however, certainly is comprehended by Nomology.

“Nomology cognizes all the forms of Public Welfare.

“As must be apparent, its cognitions are not limited to human life. The welfare of the Animals and that of Plants are objects of a very lively nomologic interest.”

My nomologic studies have, in very many ways, augmented my at all times far from slight concern in Plants.

But I must take the subject over to Next Letter.

Suffer me, however, to go back so far as to explain that I design to work into what is offered here somewhat progressively related views of Life, from Plants up to the highest human Types.

The Politics in my Philosophy of Life are wholly Independent.

II. AGRICULTURAL AND HORTICULTURAL CONCEPTIONS.

ON the twenty-second of February, 1886, let me remind You, my dear Charlie, that in February, 1884, I said to You:

“Let me here offer outlines of a theory I recently thought out, to medicine the illness that still so much hinders me.

“I think, there is in Klippart on *The Wheat-Plant,* at the outset, quite enough to justify all the glory I here give to our Chief Cereal. I need not say a word, to such a lover of our noblest animal as You are, to 15 defend the typic glory here accorded to the *Horse;* and your regard for *Washington* appears to be just like my own. Indeed, your studies of the Type discernible in him, have, in general, been shared and assisted by mine—which have been very like my studies of Chief Justice Chase. These, perhaps, have ‘hardly ever’ been quite equalled in researching, toilsome, conscientious thoroughness.—I have now no doubt that there has never been a nobler man than Washington, in body and in mind. He was of the commanding and the ablest Race of Man, the fittest to have the strong leadership it holds. His nature and his culture, with his habits and associations, made him a full Nobleman without a Noble's Rank, a very Prince unpropped by Princedom. Clearly, he deserves all that this theory of mine ascribes to him.

"'Tis true, what Herbert Spencer calls *the Bias of Patriotism* must be here considered; but I feel quite sure I am not wrong."

Wheat is not growing in the Capital; but within the Seat of Government—the *District of Columbia* —are many fields of Wheat; and, clearly, to the life of Washington, Wheat-Flour is capitally interesting. Now add the consideration, that the Agricultural Department, here, devotes particular attention to our Primate Cereal. You cannot fail to see the pertinency of the special notice taken in this place of Wheat.

The *Wheat-Plant* and the *Vine,* respectively, I have investigated very carefully.

Let me remind you of the trip—perhaps I ought to say the *tour* —on which I took your Mother and yourself in 1866.

While at Detroit, Michigan, accompanied as just indicated, I picked up and purchased, at a book-stall, the decidedly good book of my acquaintance, Klippart, on *The Wheat Plant, its Origin, Culture, Growth, Development, Composition, Varieties, Diseases,* 16 *etc., etc., together with a few remarks on Indian Corn, its Culture, etc.* Professor Klippart, when he wrote that truly valuable volume, (in 1860,) was the Corresponding Secretary of the Ohio State Board of Agriculture; a Member of the Academy of Natural Sciences; an Honorary Member of the Western Academy of Natural Sciences, at Cincinnati; and the Corresponding Secretary of the Columbus Scientific Association. He was known to me, by means of conversation and by other means, as a true Scientist. I read his book with very lively interest; and I have often looked into it since, always with a new and heightening regard. I now derive from it the paragraphs ensuing:

"It has frequently been asserted that the enactment of laws and the institution of schools were unmistakable evidences of civilization. True it is that these can exist only in societies that are not only civilized, but are also in a greater or less degree enlightened and refined;

but even many of the barbarous nations and savage hordes have laws of their own making, and many civilized communities were innocent of schools.

“But there is an evidence of civilization other than social institutions and mental development, an evidence grasped from Nature, and with her kind assistance, and fostering care, perpetuated by civilized man only.

“The true and unequivocal symbol of civilization, and consequent enlightenment and refinement is, the WHEAT PLANT. As truly as did flocks of sheep in the primitive ages lead the shepherds to the threshold, of that truly magnificent science, Astronomy, just so certainly did the wheat plant in yet earlier ages induce man to forget his savageism, abandon his nomadic life, to invent and cultivate peaceful arts, and lead a rural and, consequently, peaceful life. There is not on the vast expanse of the face of the globe a savage, barbarous, or semi-civilized nation that cultivates the wheat plant. In the settlement of New England, the Indians called the plantain the ‘Englishman's foot,’ and in the infancy of society wheat may have been similarly regarded as springing from the footsteps of the Persians or Egyptians. Our Aborigines fully appreciated the influence of the wheat plant on society, if the following anecdote, related by *Crevecœur,* the old French traveler, has any foundation in fact: The chief of the tribe of the Mississais said to his people, ‘Do you not see the whites living upon seeds, while we eat flesh? That flesh requires more than thirty moons to grow up, and is then often scarce. That each of the wonderful seeds they sow in the earth returns them an hundred fold. The flesh on which we subsist has four legs to escape from us, while we have but two to pursue and capture it. The grain remains where the white men sow it, and grows. With them, winter is a period of rest, while with us it is the time of laborious hunting. For these reasons they have so many children, and live longer than we do. I say, therefore, unto every one 17 that will hear me, that before the cedars of our village shall have died down with age, and the maple trees of the valley shall have ceased to give us sugar, the race of the little corn (wheat)

sowers will have exterminated the race of the flesh-eaters, provided their huntsmen do not resolve to become sowers.'"

Nicholas Longworth would have given no *Amen!* to that enthusiastically worded theory. I knew him well enough—quite *painfully* in one particular—to be quite sure of what I have just said of him. But did he not err on the other side? Did he not make too much of the Wine-Yielding-Grape?

My own concern in a cheap Wine of Native American production was, *beyond the pocket,* very large, when I first read the last-quoted words of Klippart, I had come to think, undoubtingly, that such a Wine could very greatly serve the cause of Social Betterment —including a Reform in the domain of Law and Order, in America. I was almost disposed to quarrel with Professor Klippart's glorification of the Wheat Plant. On reflection I had to concede, however, that it offered a substantially sound theory.

In this connection, read an extract from Ruskin's chapter on *The Angel of the Sea.* (a) That chapter—an exceedingly characteristic one—affords these paragraphs:

(a) *Modern Painters,* V, ch. iv.

"The climates or lands into which our globe is divided may, with respect to their fitness for Art, be perhaps conveniently ranged under five heads:—

"1. Forest lands, sustaining the great mass of the magnificent vegetation of the tropics, for the most part characterized by moist and unhealthy heat, and watered by enormous rivers, or periodical rans. This country cannot, I believe, develop the mind or art of man. He may reach great subtlety of intellect, as the Indian, but not become learned, nor produce any noble art, only a savage or grotesque form of it. Even supposing the evil influences of climate could be vanquished, the scenery is on too large a scale. It would be difficult to conceive of groves less fit for academic purposes than those mentioned by Humboldt, into

which no one can enter except under a stout wooden shield, to avoid the chance of being killed by the fall of a nut.

“2. Sand-lands, including the desert and dry rock-plains of the earth, inhabited generally by a nomade population, capable of high mental cultivation and of solemn monumental or religious art, but not of art in which pleasureableness forms a large element, their life being essentially one of hardship.

“3. Grape and wheat lands, namely, rocks and hills, such as are good for the vine, associated with arable ground forming the noblest and best ground given to man. In these districts only art of the 18 highest kind seems possible, the religious art of the sand-lands being here joined with that of pleasure or sense.

“4. Meadow-lands, including the great pastoral and agricultural districts of the north, capable only of an inferior art: apt to lose its spirituality and become wholly material.

“5. Moss-lands, including the rude forest-mountain and ground of the North, inhabited by a healthy race, capable of high mental cultivation and moral energy, but wholly incapable of art, except savage, like that of the forest-lands, or as in Scandinavia.

“We might carry out these divisions into others, but these are I think essential, and easily remembered in a tabular form; saying ‘wood’ instead of ‘forest,’ and ‘field’ for ‘meadow,’ we can get such a form shortly worded:—

“Wood-lands Shrewd intellect No art. “Sand-lands High intellect Religious art. “Vine lands Highest intellect Perfect art. “Field-lands High intellect Material art. “Moss-lands Shrewd intellect No art.

“In this table the moss-lands appear symmetrically opposed to the wood-lands, which in a sort they are; the too diminutive vegetation under bleakest heaven, opposed to the too colossal under sultriest heaven, while the perfect ministry of the elements, represented by bread and wine, produces the perfect soul of man.”

If I may venture here to borrow a slang-phrase, “what is the matter” with that theory? I own that it appears to me not incorrect, and that it seems to me to have no little nomologic interest.

I do not ask the leave of any person, whether Scientist, or merely Sciolist, or neither Scientist nor Sciolist, to say such things. I can, thank Heaven, stand up for my own conceptions in the sphere of Science, though I feel quite certain that the independence and originality that I have cultivated are the independence and originality to which *excess* must always be repugnant. In like words to words of the *Tourists,* I would not be *too* original and independent, but just independent and original *enough.*

Discoursing in the spirit that I have just intimated, I proceed to say, that both the typonomic and the toponomic sections of Nomology take lively interest in Ruskin's theory, respecting the pre-eminence of *Grape-and-Wheat-Lands.*

That theory, remember, classes Lands by their Produce, and by corresponding kinds of Art. It finds the noblest Art in Grape-and-Wheat-Lands. Is this conception to be treated with contempt by Scientists, because it came forth in a book on *Modern Painters* , or because it was thought out by a Writer who was not regarded as belonging the tribe of Scientists? Assuredly, from *You* at least I can expect an answer in the negative, and that with emphasis.

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This is not meant to intimate that You have been instructed to make little, either of the truly Scientifical or of the Scientists. Not in the least. For real Science and for real Scientists, we both, I am entirely sure, have ever had, and now have, all the due regard. But Science can not bear to be fenced in, even by Scientists of perfect genuineness; and it laughs to scorn the fencing-tricks of Sciolists, assuming to be Scientists.

One afternoon, at Washington, when Chief-Justice Chase and I had just had a most interesting talk, with a most pleasant walk, with one of the best men I have met here—I mean none other than Professor Henry, then of the Smithsonian Institution—I remarked to him, that I had had occasion to remark, at Washington, but not in Prof. Henry, a great want of truly scientific liberality. I had seen this in persons who at least *accepted,* if they did not just *assume,* the rank of Scientists. I told him some of the quite various as well as many considerations, which had led me to induce my family—yourself included, though You were so young—to join with me in the formation of the Ernest Institute, and afterwards to translate it hither from the Cincinnati Valley. He evinced a lively interest in the communication. Doubtless, had he lived a little longer, he would have done more than countenance my scientific enterprise. However this may be, my judgment is, dear Charlie, that we have too many simple Sciolists, who try to play the part of Scientists, at Washington. I speak not without feeling on the subject, partly on account of heavy hindrances which I have experienced since I came on to Washington, in January, 1873.

No scientific doctrine that I have advanced has ever been *denied.* There has been no *attack,* in any place, on any scientific theory of mine. Oh, no! Attack can be attacked in turn. A thing attacked can be defended. But how can indifference and silence of the sort to which my meaning points, on this occasion, be attacked, without at least the danger of appearing to lack modesty?

Wherever I have found a seeming Scientist at Washington whom I did not at once perceive to be merely a Sciolist, I have *presumed* him to be a true votary of Science, and have honored him accordingly, as long as possible, and very cordially. I have, myself, (to some extent), been treated in quite other style, I need not say to You, dear Son.

There is not, I am sure, because there simply *can* not be, at Washington, (or elsewhere, for that matter,) any person more devoted than I have been, from my Boyhood to this hour, to the true cause of real Science and of real Scientists. If I am ignorant of aught that ought

to be within my knowledge, this is not because I have 20 not wished and tried to learn, according to ability and opportunity. I cannot charge myself with any negligence in study.

After some reflection, I determine to make an Exhibit from matter which I sent to press some months ago. I mean an extract from my little book entitled *Letters,* which, for the present, I withdraw from publication. The Exhibit commences on page 19 of that book, and runs to and includes page 34 thereof.

Quite prominent among the matter I have studied in the spirit of a Searcher is the matter, running through John Ruskin's works, relating to Man's *habitat.* I have compared it with the matter, running through the *Kosmos* and the other works of Humboldt, in relation to the same concern of Life-Philosophy. To-morrow I shall take up Ruskin's theory, and bring it into fit comparison with other theories of cognate character.

I have devoted to the subject an attention that I can not think has been of little practical account. My aim throughout, has been to give the due regard to truly practical considerations. I cannot afford to waste my time. Nor can I in the least afford to lead you into fruitless or but slightly fruitful studies, my dear Charlie.

III. LANDS CLASSED BY KINDS OF ART AND PRODUCTS.

FORTUNATELY, my dear Charlie, Ruskin's theory, which classes Lands by Products and by corresponding kinds of Art, requires no wide excursion in the realm of Climatology. But it assumes the known existence of some Climes. It speaks of “the Climates or lands into which our Globe is divided.” Climate is here treated as equivalent to Land. And, certainly, there is a sense in which the word, *Land,* may be deemed a synonym of Climate.

Ruskin says that the Climates or Lands into which our Globe is divided, may be, perhaps, conveniently ranged under five heads, “ *with respect to their fulness for Art.* ” He evidently has in main consideration *European* Lands or Climes. What character of Art has he in contemplation? Is it not what he defines as *Noble* Art?

But what is that? What is the Noble in the sphere of Art, according to the views and sentiments of Ruskin?

Let me make this clear to every Reader.

I must quote quite freely here. I must make use of Ruskin's very words.—He says in an extremely interesting chapter of the Modern Painters:

“In the entire range of art principles, none perhaps present a difficulty so great to the student, or require from the teacher expression so cautious, and yet so strong, as those which concern the nature and influence of magnitude.

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“In one sense, and that deep, there is no such thing as magnitude. The least thing is as the greatest, and one day as a thousand years, in the eyes of the Maker of great and small things. In another sense, and that close to us and necessary, there exist both magnitude and value. Though not a sparrow falls to the ground unnoted, there are yet creatures who are of more value than many; and the same Spirit which weighs the dust of the earth in a balance, counts the isles as a little thing.

“The just temper of human mind in this matter may, nevertheless, be told shortly. Greatness can only be rightly estimated when minuteness is justly reverenced. Greatness is the aggregation of minuteness; nor can its sublimity be felt truthfully by any mind unaccustomed to the affectionate watching of what is least.

“But if this affection for the least be unaccompanied by the powers of comparison and reflection; if it be intemperate in its thirst, restless in curiosity, and incapable of the patient and self-commandant pause which is wise to arrange, and submissive to refuse, it will close the paths of noble art to the student as effectually, and hopelessly, as even the blindness of pride, or impatience of ambition.

“I say the paths of noble art, not of useful art. All accurate investigation will have its reward; the morbid curiosity will at least slake the thirst of others, if not its own; and the diffused and petty affections will distribute, in serviceable measure, their minute delights and narrow discoveries. The opposite error, the desire of greatness as such, or rather of what appears great to indolence and vanity;—the instinct which I have described in the ‘Seven Lamps,’ noting it, among the Renaissance builders, to be an especial and unfailing sign of baseness of mind, is as fruitless as it is vile, no way profitable—every way harmful: the widest and most corrupting expression of vulgarity. The microscopic drawing of an insect may be precious; but nothing except disgrace and misguidance will ever be gathered from such work as that of Haydon or Barry.”

This may not do wrong to Haydon or to Barry; but I think it *does;* and I can not allow it to pass as if adopted here. Ruskin proceeds to say:

“The work I have mostly had to do, since this essay was begun, has been that of contention against such debased issues of swollen insolence and windy conceit; but I have noticed lately, that some lightly-budding philosophers have depreciated true greatness; confusing the relations of scale, as they bear upon human instinct and morality; reasoning as if a mountain were no nobler than a grain of sand, or as if many souls were not of mightier interest than one. To whom it must be shortly answered that the Lord of power and life knew which were his noblest works, when He bade His servant watch the play of the Leviathan, rather than dissect the spawn of the minnow; and that when it comes to practical question whether a single soul is to be jeoparded for many, and this Leonidas, or Curtius, or Winkelried shall 22 abolish—so far as abolishable—his own spirit, that he may save more numerous spirits, such question is to be solved by the simple human instinct respecting number and magnitude, not by reasonings on infinity:—

“‘Le navigateur, qui, la nuit, voit l'océan étinceler de lumière, danser en guirlandes de feu, s'égaye d'abord de ce spectacle. Il fait dix lieues; la guirlande s'allonge indéfiniment, elle s'agite, se tord, se noue, aux mouvements de la lame; c'est un serpent monstrueux qui va

toujours s'allongeant, jusqu'à trente lieues, quarante lieues. Et tout cela n'est qu'une danse d'animalcules imperceptibles. En quel nombre? A cette question l'imagination s'effraye; elle sent là une nature de puissance immense, de richesse epouvantable. . … Que sont ces petits des petits? Rien moins que les constructeurs du globe où nous sommes. De leurs corps, de leurs débris, ils ont préparé le sol qui est sous nos pas. . … Et ce sont les plus petits qui ont fait les plus grandes choses. L'imperceptible rhizopode s'est bâti un monument bien autre que les pyramides, pas moins que l'Italie centrale, une notable partie de la chaine des Apennins. Mais c'était trop peu encore; les masses énormes du Chili, les prodigieuses Cordillères, qui regardent le monde à leurs pieds, sont le monument funéraire où cet #tre insaisissable, et pour ainsi dire, invisible, a enseveli les débris de son espèce disparue.'—(Michelet: *L'Insecte.*)

"In these passages, and those connected with them in the chapter from which they are taken, itself so vast in scope, and therefore so sublime, we may perhaps find the true relations of minuteness, multitude and magnitude. We shall not feel that there is no such thing as littleness, or no such thing as magnitude. Nor shall we be disposed to confuse a Volvox with the Cordilleras; but we may learn that they both are bound together by links of eternal life and toil; we shall see the vastest thing noble, chiefly for what it includes; and the meanest for what it accomplishes. Thence we might gather—and the conclusion will be found in experience true—that the sense of largeness would be most grateful to minds capable of comprehending, balancing, and comparing; but capable also of great patience and expectation; while the sense of minute wonderfulness would be attractive to minds acted upon by sharp, small, penetrative sympathies, and apt to be impatient, irregular, and partial. This fact is curiously shown in the relations between the temper of the great composers and the modern pathetic school. I was surprised at the first rise of that school, now some years ago, by observing how they restrained themselves to subjects which in other hands would have been wholly uninteresting (compare Vol. IV., p. 19); and in their succeeding efforts, I saw with increasing wonder, that they were almost destitute of the power of feeling vastness, or enjoying the forms which expressed it. A

mountain or great building only appeared to them as a piece of color of a certain shape. The powers it represented, or included, were invisible to them. In general, they avoided subjects expressing space or mass, and fastened on confined, broken, and sharp forms; liking furze, fern, reeds, straw, stubble, dead leaves, and such like, better than strong stones, broadflowing leaves, or rounded hills: in all such greater 23 things, when forced to paint them, they missed the main and mighty lines; and this no less in what they loved than in what they disliked; for though fond of foliage, their trees always had a tendency to congeal into little acicular thorn-hedges, and never tossed free. Which modes of choice proceed naturally from a petulant sympathy with local and immediately visible interests or sorrows, not regarding their large consequences, nor capable of understanding more massive view or more deeply deliberate mercifulness;—but peevish and horror-struck, and often incapacle of self-control, though not of self-sacrifice. There are more people who can forget themselves than govern themselves."

It may be so, dear Son. But how many self-forgetting persons have you come to know? Ruskin subjoins:

"This narrowly pungent and bitter virtue has, however, its beautiful uses, and is of special value in the present day, when surface-work, shallow generalization, and cold arithmetical estimates of things, are among the chief dangers and causes of misery which men have to deal with.

"On the other hand, and in clear distinction from all such workers, it is to be remembered that the great composers, not less deep in feeling, are in the fixed habit of regarding as much the relations and positions, as the separate nature, of things; that they reap and thrash in the sheaf, never pluck ears to rub in the hand; fish with net, not line, and sweep their prey together within great cords of errorless curve;—that nothing ever bears to them a separate or isolated aspect, but leads or links a chain of aspects—that to them it is not merely the surface, nor the substance, of anything that is of import; but its circumference and continence; that they are pre-eminently patient and reserved; observant, not curious;

—comprehensive, not conjectural; calm exceedingly; unerring, constant, terrible in stedfastness of intent; unconquerable; incomprehensible: always suggesting, implying, including, more than can be told.

“And this may be seen down to their treatment of the smallest things.

“For there is nothing so small but we may, as we choose, see it in the whole, or in part, and in subdued connection with other things, or in individual and petty prominence. The greatest treatment is always that which gives conception the widest range, and most harmonious guidance;—it being permitted us to employ a certain quantity of time, and certain number of touches of pencil—he who with these embraces the largest sphere of thought, and suggests within that sphere the most perfect order of thought, has wrought the most wisely, and therefore most nobly.

“I do not, however, purpose here to examine or illustrate the nature of great treatment—to do so effectually would need many examples from the figure composers; and it will be better (if I have time to work out the subject carefully) that I should do so in a form which 24 may be easily accessible to young students. Here, I will only state in conclusion what it is chiefly important for all students to be convinced of, that all the technical qualities by which greatness of treatment is known, such as reserve in color, tranquillity and largeness of line, and refusal of unnecessary objects of interest, are, when they are real, the exponents of an habitually noble temper of mind, never the observances of a precept supposed to be useful. The refusal or reserve of a mighty painter cannot be imitated; it is only by reaching the same intellectual strength that you will be able to give an equal dignity to your self-denial. No one can tell you beforehand what to accept, or what to ignore; only remember always, in painting as in eloquence, the greater your strength, the quieter will be your manner, and the fewer your words; and in painting, as in all the arts and acts of life, the secret of high success will be found, not in a fretful, and various excellence, but in a quiet singleness of justly chosen aim.”

Lo! I have quoted a whole chapter; yet I offer no apology. The lesson taught in the just-quoted paragraphs, is full of practical although poetical concern to all that is to follow in this volume.

My dear Charlie, what we have just seen distinguishes two kinds of Art, which are both represented *in what is best* in our grand *Capitol.* The kinds of Art discriminated are the *Noble* and the *Useful.*

Somewhat hacknied as has come to be the phrase, “the Good, the True, and the Beautiful,” it ought not to be altogether laid aside. The Good which takes the first place in the phrase, includes much of the Useful; and so does the True. But we must not stop even here—We must acknowledge, likewise, that much of the Beautiful is Useful, too.

The Capitol at Washington has never seemed to me a work to which no sound exception can be taken. Not at all. I shall hereafter point out what appears to me exceptionable in that edifice. But, surely, in its presence one may thoroughly appreciate the distinction made by Ruskin between the merely *Useful* and the *Noble,* in the realm of Art.

According to Ruskin, Architecture, on account of the dominancy of the Useful in it, must be deemed lower than either Painting or Sculpture; but I am not quite prepared to take that doctrine, unrestrained.

I like, however, very much, these words of the same teacher.

“In these books of mine, their distinctive character, as essays on Art, is their bringing everything to a root in human passion or human hopes. Arising first, not in any desire to explain the principles of Art, but in the endeavor to defend an individual painter from injustice, they have been colored throughout—nay, continually, altered in shape, and ever warped and broken, by digressions respecting social questions, which had for me an interest tenfold greater than the work I had been forced into undertaking. Every principle of Painting which I have stated, is traced to some vital or spiritual fact; and in my works

on Architecture the preference accorded finally to one school over another, is founded on a comparison of their influences on the life of 25 the workman—a question by all other writers on the subject of Architecture wholly forgotten or despised."

Without perceiving here a comprehensive *canon* in respect to Architecture, Painting, and Sculpture, I regard the doctrine as most creditable to the Teacher, whom, indeed, I can not choose but *love* as well as *admire.*

His theory, that Lands may be classed by their Products and by corresponding kinds of Art, refers, it is quite obvious, at least in chief, to Noble Art. But is it not substantially correct in reference to Art in general?

Let us begin with Agriculture.

There is in the *Encyclopœdia Britannica* a highly valuable article on *Agriculture,* which remarks: "The soil constituting the subject-matter on which its Husbandman operates, its character necessarily regulates to a large extent the nature of his proceedings. The soil or surface-covering of the earth, in which plants are produced is exceedingly varied in its qualities. Being derived from the disintegration and decomposition of the rocks which constitute the solid surface of the globe, with a mixture of vegetable and animal remains, soils take their character from that of the rocks from which they have chiefly been derived. There is thus a generally prevailing resemblance between the soils of a district and the rocks over which they lie, so that a knowledge of the composition of the one affords a key to the character of the other. But this connection is modified by so many circumstances that it is altogether impossible by the mere study of geology to acquire an easy and certain rule for determining the agricultural character of the soil of any particular district or field, as it has been the fashion with some writers of late years to assert. 'When, indeed, we regard a considerable tract of land, we can, for the most part, trace a connection between the subjacent deposits and the subsoil, and, consequently, the soil. Thus, in a country of sandstone and arenaceous (a) beds, we shall find the soil sandy; in one of limestone,

more or less calcareous; in one of schistose rocks, more or less clayey. But even in tracts of the same geological formation there exist great differences in the upper stratum, arising from the prevalence of one or other member of the series, or from the greater or less inclination of the strata, by which the debris of the different beds are more or less mixed together on the surface. The action of water, too, in denuding the surface of one part, and carrying the debris in greater or smaller quantity to another, exercises everywhere an important influence on the character of soils. Thus the fertility of a soil on the higher ground, from which the earthy particles are washed, is found to be very different from that of the valley to which these particles are carried. It is seen, accordingly, that, within the limits of the same geological formation, soils are greatly varied, and that the mere knowledge of the formation will not enable us to predicate the character of the soil of

(a) Having the quality of sand—sandy.

26 any given tract, either with respect to its texture, its composition, or its productiveness.' (a) Even a very limited acquaintance with the geology of Great Britain serves, however, to account for the exceedingly diversified character of its soils. The popular definitions of soils—and to these it is safest for practical farmers to adhere —have respect to their most obvious qualities. Thus they are designated from their composition, as *clays, loams, sands, gravels, chalks, or peats;* or from their texture, in which respect those in which clay predominates are called *heavy, stiff,* or *impervious;* and the others *light, friable,* or *porous.* From the tendency of the former to retain moisture, they are spoken of as *wet* and *cold,* and the latter, for the opposite reason, as *dry* and *warm.* According to their measure of fertility, they are also described as *rich* or *poor.* The particular crops for the production of which they are respectively considered to be best adapted, have also led to clays being spoken of as *wheat* or *bean soils* and the friable ones as *barley* and *turnip soils.* This latter mode of discriminating soils is, however, becoming every day less appropriate; as those of the lighter class, when sufficiently enriched by suitable manuring, are found the most suitable of all for the growth of wheat; while the efforts of agriculturists are now successfully directed to the production of root

crops on soils so strong as heretofore to have been reckoned unfit for the purpose. But still, such extreme diversities as we everywhere meet with in our soils must necessarily lead to a corresponding diversity in their agricultural treatment; and hence the necessity for keeping this fact prominently in view, in every reference to British agriculture as a whole."

(a) Citing Low's *Practical Agriculture,* p. 42.

The *Agricultural Department* at Washington affords much printed matter in respect to the diversities of Soil. That matter is inclusive of passages in a deplorably hurried Report on *Forestry* by Dr. Hough. There are in Dr. Hough's Report, in spite of its hot-hastiness, good things. Among them is this passage:

"Writers upon forestry adopt the following as a proper definition of inclined surfaces:

"A *gentle slope* is from level to 10° of elevation.

"A *somewhat steep slope* from 10° to 20°.

"A *steep slope* from 20° to 34°.

"A *very steep slope* from 35° to 45°.

" *An escarpment* 45° and upwards.

"As a general rule, the climate of plains is more uniform than that of mountains, but this depends upon elevation, prevailing winds, and proximity to large bodies of water. The latter have an equalizing tendency, and the choicest fruit-regions of the country owe this excellence to the protections thus afforded against premature blossoming.

"Of such, we have examples in the fruit-belt along the eastern shore of Lake Michigan, the southern shores of Lakes Erie and Ontario, and 27 the region around the southern end of the interior lakes of central and western New York."

This vividly reminds me of a very thorough topo-typonomic survey that (your Mother, and yourself being part of the time with me) I made in 1866, of the Wine-Islands making up the Erie Archipelago.

In Dr. Hough's Report was also said to the Commissioner of Agriculture, (Le Duc), in 1877:

“It is convenient to have a definition of degrees, in speaking of the character of a climate in its reference to sylviculture, and to this end the following terms are specified, by an approved writer upon forestry, (a) :

(a) *Cours d' Amenagement des Forets, by H. Nanquette* (1866), p. 12.

“‘ *Warm climates* are those in which the olive, the fig, and cork tree will grow spontaneously.

“‘ *Mild climates* produce the vine, the almond, and the peach in the open air, with full success, as also all kinds of fruit-trees and culinary vegetables. Acorns and beech-nuts grow in great abundance every two or three years.

“‘In *temperate climates* fruit-trees and garden vegetables generally thrive well. In the forest we see all forest trees growing, except such as are limited to warm climates. Acorns and beech-nuts abound once in six or eight years.

“‘In *rude climates* the culture of fruit-trees and delicate garden vegetables is difficult. In the forests, resinous trees more abound, and years of fruitful growth of acorns, &c., are rare.

“‘In *very rude climates* buckwheat, oats, and potatoes are the principal harvests that come to maturity. The prevailing kinds of timber are the firs, the larch, the birch, and the beech, but the latter is almost always poorly developed. In plains, these designations sufficiently characterize the general climate, as respects forests, and we shall but rarely have occasion to mention exceptions of temperature in certain districts. Upon

mountains, however, everything depends upon elevation and exposure, on account of the modifications which they produce, and we may pass through every degree in rising a few thousand feet.'"

I wrote originally for a (never finished) *Primer of the Law distinctively American,* this language, the result of very careful, long-continued study:

"I am neither a native nor a resident of Ohio; but it has long seemed to me that there is something wonderfully typical in the whole tract of territory comprehended in the Cincinnati Valley and its environs, and that Ohio is, in many aspects, the most representative of all the States. Ohio notably represents the land which, through its ample boundaries enclose much less than half of the New Continent, is generally called America. New York and California are also very typical. They represent, however, not so much the country as some 28 districts of the country. So it is with the 'Palmetto State,' and with Louisiana. But Ohio, never equalling, in some respects, the States named with her, much surpasses each of them in typicalness. You behold no 'Golden Gate,' no stately Hudson, no great spread of waters, where Ohio built her most characteristic city. California has mountains, and the Empire State has mountainous expanses; a 'new Switzerland' delights the tourist in New Hampshire; through the Keystone State, the Old Dominion, the two Carolinas, Georgia, Alabama, Tennessee, Kentucky, pass the Alleghanies or their cognate elevations; in Missouri, there appear forerunners of the Rocky Mountains; in the heights last named are aspirations and depressions, illustrating the majestic force of contrast in the mountains, —while the territory of Ohio, generally level, is but hilly even where it borders the two terraces of Cincinnati. Once, the Cincinnatian could anticipate the flourishing of a new *Rheingau* in the lands about these terraces; but California has surpassed Ohio as the Vineyard of America. Then, in important points, New England is more representative than any other portion of the country, and a like remark is applicable to the South. But, on the whole, Ohio, in her land, her people, and her polity and jurisprudence, is more representative than any of her sisters, wayward or demure."

While I resided, and supposed that I was settled, in your native State, I studed Viticulture with a view to some practice of the Art, and therefore in a fully scientific spirit; and I sorrowed when I felt obliged to assign to California precedence in that particular.

Some of my viticultural research, You are aware, was carried on in the delightful region of the Erie Archipelago. A part of the research referred to was assisted, far from slightly, in the manner indicated in a passage of my *Book of Type and Types,* in the first chapter.

What I had observed of Agriculture ere we came to the District of Columbia was, first, in the “Blue Grass Region” of my native State, and, after that, mainly in your native State. I must speak of those trans-Alleghany observations very carefully.

But I am interrupted here by a professional affair which presses, and the subject must go over to next Letter.

19a

About an Institute. **EXHIBIT**

Elsewhere, I make this explanation, not to You:

The term, Typonomy, I must acknowledge, is of my own coinage; but it seems to me an obviously fit name for the exceedingly important science, that cognizes Type, organical or inorganical, throughout its wonderful variety and reach.

Toponomy appears to me the obviously proper designation of the cognate science that cognizes local influence on life and character throughout the world.

To both the Sciences referred to, much attention has been, and is to be, devoted by the Ernest Institute.

Let me remind you that my piece, called *At the Doctor's,* teaches in this manner:

“When the lover, thus rehearsing to his own troubled heart the reasons that were to destroy his hopes, once more referred to Bertha's art, he remembered Bernard's language: ‘I have given my daughter to the art of painting.’ He remembered Dr. Frisch's half insane devotion to Typonomy, the science of the law of type. A vision of the type room as it was, on Sunday afternoon, three weeks ago, produced itself.

“Bertha was at work on a head, designed to represent a well-known type of what the doctor called ‘the city Savagery.’ The doctor was discoursing.

“‘Ruskin,’ said the doctor, ‘makes an unintended contribution to Typonomy. He says: ‘The climates or lands into which our globe is divided, may, with respect to their fitness for Art, be perhaps conveniently ranged under five heads.’ And he makes ‘a form shortly worded of his view of (1) ‘forest lands (2) sand lands, (3) grape and wheat lands, (4) meadow lands, (5) moss lands, in which shortly worded form we have ‘wood’ instead of ‘forest,’ ‘vine’ instead of ‘grape and wheat,’ and ‘field’ instead of meadow,’ thus:

“Wood-lands Sand-lands Vine-lands Field-lands Moss-lands Shrewd intellect High intellect Highest intellect High intellect Shrewd intellect No art. Religious art. Perfect art. Material art. No art.

“‘Here,’ continued Frisch, ‘are types of land and types of art, supposed to be correlated by a law of type. What Ruskin writes in explanation of his system, is a contribution to Typonomy, well worth attention. But it is in works like those of Montesquieu and in those of the Ethnographers—not to mention Humboldt and Herder—that we find the great body of materials for our system. Montesquieu was, in an especial manner, a pre-cursor of me.’

20a

“Dr. Frisch uttered this last sentence quite unblushingly, and Bertha, turning from her easel, listened, and did not seem to be disturbed by the quiet and apparently unconscious egotism of the doctor's language. She was evidently quite accustomed to that form of language, and she seemed to have fully caught the enthusiasm out of which it issued.

“‘Montesquieu, like me,’ proceeded Dr. Frisch, ‘attributes great influence in the formation of a type of man through the type of law to be applied to it, as well as in the formation of law itself, to the type of what is now called *habitat,* in which the type of man happens to be placed. But Montesquieu has been misrepresented by those (among them, Voltaire,) who have stated the case against him, in respect of the influence he attributed to the *habitat* — in other words, to the ‘local habitation’—of a nation, in determining its type of religion, laws, and manners. I shall prove that he asserted the great principle of my Typonomy. The very distinctive doctrine of Typonomy is this: That mind is mightier than matter, and that man can master his conditions.’’

Mark, dear Charlie, that the learned Doctor is directly represented as enthusiastical.

The same piece has the following paragraphs:

“The looks of Bertha answered well the looks of the Typonomer, as he proceeded to explained the method and application of Typonomy.

“Proceeding, he explained, ‘through a view of the types of *habitat* their modes and modifiers, to a view of the types of habits, it examines how a type of man may be modified by a type of place of living, or, in other words, a type of *habitat,* and how—sublime consideration!—how a type of man may, by means of Art, generally, and, particularly, by the Art of Law, alter alike itself and the type of *habitat,* with which it happens to be in contact, and which, unresisted, must become its master. Had Typonomy been well studied, the country would have understood, from the beginning, the great formidableness of the rebellion. In Typonomy we learn how a dominant idea may arm a tropic type with a substitute for northern courage and endurance. Ah! a lifetime would be well devoted to the assemblage of materials for my design. Were I but as young as I was when I applied to Humboldt’—

“‘ *I* am young, said Bertha, rising, and with flashing eyes.

“‘I know, I know, America,’ exclaimed the doctor, ‘but’—

“The doctor paused. Bertha turned back, blushing, to the easel. Felton fancied, that the doctor's look was one most auspicious for *him,* however ill it boded for the doctor's great discovery in science. It appeared to mean: ‘There is Felton, who adores you. When you shall have married Felton, how much time will you devote to the new science?’”

Over two-and-twenty years have passed since I composed those words. They vividly recall to me the studies I had made of Humboldt's *Kosmos.*

One of its most valuable typonomic contributions is effected in these weighty words:

21a

“Est würde das allgemeine Naturbild, das ich zu entwerfen strebe, unvollständig bleiben, wenn ich hier nicht auch den Muth hätte das Menschengeschlecht in seinen physichen Abstufungen, in der geographischen Verbreitung seiner gleichzeitig vorhandenen Typen; in dem Einfluss welchen es von den Kräften der Erde empfangen und wechselsetig, wenn gleich schwächer, auf sie ausgeübt hat; mit wenigen Zügen zu schildern. Abhängig wenn gleich in minderem Grade als Pflanzen und Thiere, von dem Boden und den meteorologischen Processen des Luftkreises; den Naturgewalten durch Geistesthätigkeit und stufen weise erhähte Intelligenz, wie durch eine wunderbare, sich allen Klimaten aneignede Biegsamkeit des Organismus leichter entgehend; nimmt das Geschlecht wesentlich Theil an dem ganzen Erdenleben.”

I have thus translated them:

“The universal picture of nature which I try to throw off, would be imperfect, had I not also the courage, here, to describe, by means of a few strokes, the Human Race in its physical gradations; in the geographical propagation of its contemporaneous types; in the influence which it receives from the forces of the earth, and reciprocally and, though more weakly, exerts over them. Dependent, although in less degree than Plants and Animals,

on the soil, and on the meteorological processes of the atmosphere; more easily escaping from the powers of nature through spiritual activity and step-by-step elevated intelligence, as well as by a wonderful flexibility of the organism, adapting it to all climates; the Race essentially takes part in all the life of earth."

The Ernest Institute has, in its teaching, carefully avoided errors in respect to the unquestionably very great part Language plays in Life throughout the world. That teaching does not find in a People's Idiom a perfect mirror of its Character. The Ernest Institute has always taught that all a People *does,* as well as all it *says,* is needed to afford a perfect glass of its distinctions.

I can not accept, but I acknowledge much good intimation in, this language of Prof. Dr. Hermann Adelbert Daniel in his *Deutschland nach seinen physischen und politischen Verhält nissen geschildert:*

"Deutsches Nationalbewusztsein musz sich vor Allem im begeisterten Werthhalten der Deutschen Sprache bethätigen. Für jedes Volk ist seine Sprache ein köstliches Gut, in dem sich der Volksgeist, die Nationalität am treuesten abspiegelt; für das Deutsche um so mehr, als es neben dem Christenthum ihr sein engeres Zusammenschliesen, ihr allein seinen Gesammtnamen verdankt."

Naturally, Conversation and some kinds of Public Utterance are much discoursed of in the Ernest Institute.

22a

An Open Letter of mine includes these paragraphs:

In helping You to fit yourself for creditable Practice of the Law, I have not limited my view to Usefulness alone. In this respect, I have been not a little influenced by Wirt's peculiarities in Word-Work and by his fine oratoric theories—which, let me passingly remark, out highly self-sufficient though unquestionably highly oratoric Ingersoll—I told

You how I heard him speak of Wirt, so very uppily!—might have well have studied more than superficially.

Wirt would have readily agreed, that considerations, very similar to those which ought to govern Building, viewed as comprehending Architecture, are quite evidently applicable to methodic Speech and, so, to all Forensic Speech.

In his already-quoted letter to Judge Randall, are these words: “The natural beauties of your place, and those little embellishments of your grounds which will cost you nothing, will give full employment to your taste and your leisure-time, for some years to come.” Supposed Embellishment, in quite too many cases, hurts Discourse or Place; but true Embellishment is always good for all of which it can form part.

A Building meant to express or to delight a Noble Sentiment, apart from mere Utility, may have, in greater or in less degree, a title to the rank, accorded to the Architectural, in the just-intimated sense. This doctrine, You need not be told, results from at least much certainly not immethodic and not inexpensive study of the Art and Science of Fine Building. Architecture is, indeed, among the things which I have had even juridical occasion to explore; and, quite apart from its juridical concern, it has long much engaged my thoughts. According to my views, it makes large figure in a full Philosophy of Life.

No full Philosophy of Life could overlook the proper Housing of the Family: nor could it overlook the proper Housing of the Government: in short, none of the forms of Building could be unregarded by a full Philosophy of Life. Both Houses and their Furniture have therefore well, not seldom, occupied our thoughts; and we do not concern ourselves too much about the House I bought, to serve us as a Home in Washington.

Typonomy gives very great attention to such matters.

23a

II.

IN the Nomological Department of the Ernest Institute is inculcated, that Life, Law, and Language are the things which Legists ought to study more than other things.

My little-published little book, entitled *Law for All,* presents this language, in a foot-note:

It appears to me that not a little utility as well as much congenial entertainment might be found by Legists in the use of a method such as that I shall here try to outline.

Rogron's *Les Cinq Codes* has an introduction that contains the words: “La loi, en général, est une règle de conduite, prescrite par une autorité à laquelle on est tenu d'obeir.” These words are almost English themselves,

Vocabulary 1.

La, *the.*

une, (f). *one.*

conduite, (f.) *conduct*

autorité, (f.) *authority.*

(tenir), tenu, *bound, held.*

loi, (f.) *law.*

règle, (f.) *rule.*

prescrite, (from prescrire,) *prescribed.*

à, *to, from.*

obeir, *to obey.*

est, *is.*

de, *of.*

par, *by.*

laquelle, (f.) *which.*

yet, for reasons to be shown hereafter, we translate them formally, as follows: The law (or say, law) in general is a rule of conduct, prescribed by an authority which one is bound to obey. In like manner, one may say that language, treated as a system, is, in general, a rule of expression. Language is not lawless. In a certain sense, a rule of syntax is a law of grammar. But the laws of conduct have a sanction somewhat different from that applied by the laws of language.

Rogron, whom we have already quoted, thus defines the legal sanction: “La sanction de la loi est la peine ou la récompense, le biene ou le mal, attaché à l'observation ou à la violation de ses préceptes et de ses défenses: ainsi la peine de mort est la sanction de la loi qui défend l'assassinat.”

Vocabulary 2.

sanction, (f.) *sanction.*

bien, (m.) *good, advantage, benefit.*

observation, (f.) *observance.*

préceptes, (m.) *precepts.*

mort, (f.) *death.*

assassinat, (m.) *murder.*

peine, (f.) *penalty.*

mal, (m.) *evil, pain, disadvantage.*

violation, (f) *violation.*

defenses, (m.) *prohibitions.*

qui, *which.*

récompense, (f.) *recompense.*

attaché, (from attacher,) *attached.*

ses, (from son,) *its.*

ainsi, *thus, so.*

defend, (from defender,) *forbids.*

In English: “The sanction of the law is the penalty or the reward, the good or the evil, attached to the observance or to the violation of its precepts and its prohibitions; thus, the penalty of death is the sanction of the law which forbids murder.” No such enforcement sanctions rules of expression, though the sense of cultivated men and women, with the taste of persons constantly familiar with good lingual usage, may have the full force of “une autorité à laquelle on est tenu d'obeir.”

24a

But such considerations take us not far toward a thorough comprehension of the intimate relations, binding Law and Language.

Let us go back to the word prescribed (*prescrite*) in Rogron's definition of law in general. That word, if literally taken, is not quite in place. One may say, perhaps, that all rules of

law are somehow, in effect, *laid down;* but certainly they are not all, strictly speaking, *prescribed* . Justinian's Institutes contain these words: “Sine scripto jus venit, quod usus approbavit; nam diuturni mores, consensu utentium comprobati, legem imitantur.”

Vocabulary 3.

Sine, *without.*

venit, (from venire,) *came.*

approbavit, (from approbare,) *has approved.*

mores, (m.) (from mos.) (m.) *way, manner, fashion, custom.*

comprobati, (from comprobare,) *approved, allowed.*

scripto, (n.) (from scriptum,) *writing.*

quod, *that which.*

nam, *for.*

consensu, *with the consent.*

legem, (f.) (from lex,) *statute law, ordinance.*

jus, (n.) *law.*

usus, (m.) *usage, custom.*

diuturnus, *lasting, of lony duration or continuance; of long life.*

utentium, (from utens,) *those using.*

imitantur, *resemble, imitate,* (from imitari.)

Here are several translations, each of which, perhaps, is open to some critical exception, and one of which may even be considered ludicrously wrong: Harris Englishes as follows: “The unwritten law is that, which usage has approved; for all customs, which are established by the consent of those who use them, obtain the force of a law.” And Cooper thus endeavors to improve the Harris version: “The unwritten law is that, which usage has approved; for daily (!) customs, established by the consent of those who use them, put on the character of law.”

For some time I often had at hand a book, printed in 1839 at Leipzig, in the Roman character but in the German language. On the title-page we find displayed these words and abbreviations: “Das Corpus Juris Civilis in's Deutsche ubersetzt von einem Vereine Rechtsgelehrter und herausgegeben von Dr. Carl Edward Otto, Kaiserl. Russischem Hofrathe undordentl. Professor der Rechte an der Universitat Dorpat, Dr. Bruno Schilling, Koniglich. Sachsischem Consistorial-Assessor und Professor der Rechte an der Universitat Leipzig, und Dr. Carl Friedrich Ferdinand Sintenis offentl. ordentlichem Professor der Rechte und Beisitzer des Spruchcollegiums an der Universitat Giessen, als Redactoren.” No translation of this long title-page seems necessary, and we may at once proceed to take from the body of the book the following doing into German of the Latin we have seen twice done into English. Our German legal *savants* translate after this characteristic fashion: “Ungeschrieben kam dasjenige Recht auf, welches der Gebrauch billigte; denn das Langhergebrachte, mit allgemeiner Uebereinstemmung Gebilligte, steht dem Gesetze gleich.”

Vocabulary 4.

Ungeschrieben, *unwritten.*

das, (n.) *the, that.*

welches, (n.) *which.*

kam, *came.*

Recht, (n.) *law, legal system.*

aufkommen, *to arise.*

dasjenige, (n.) *that.*

auf, *up, forth,* etc.

Gebrauch, (m.) *usage, custom.*

25a

der, (m.) die, (f.) das, (n.) *the.*

denn, *for.*

billigte, *approved.*

Langhergebrachte, *long customary, long usual, anciently customary,* (eine hergebrachte Gewohnheit, (f.) being *an ancient custom.*)

billigen, *to approve.*

Those German jurists had found out, that, while *daily,* or *belonging to the day,* or, rather, the equivalent in German of those English terms, translates very well the Latin adjective *diurnus,* words equivalent to or identical with *lasting, of long duration, or continuance, of long life,* are necessary to render *diuturnus.* Had the learned American translator of the Institutes discovered that? His “daily customs, established by the consent of those who use them,” are not, by any means, identical with the “ *diuturni mores,* ” the long continued,

lasting customs, contemplated by Tribonian and his fellows, in composing for Justinian the great legal document now under notice.

Let us now return to the bare fact which the original of the translations throws into clear light. That fact is that parts of law arise without writing even where there is a written legal system—that there are in perhaps every legal system unenacted, unprescribed rules of conduct, evolved in usage merely. We must hereafter give renewed consideration to the fact; but now our objects call for the remark, that, notwithstanding the existence and the numerousness of unwritten laws, the indebtedness of law in general and in particular to language and linguistic art and science are incalculable.

Law may exist in legal contemplation, in juridical idea, merely. It may be not only unwritten, but entirely unworded. You may suppose a rule of life without supposing the reduction of that rule to verbal form. But the use of language in the written parts of law is very great, and beyond that use the obligations of the legal system, comprehending adjective and substantive provisions as we shall distinguish them hereafter, and involving the whole action of the legal forces, are so great and various as to defy all definition and description.

Very proud is the account of jurisprudence given by Justinian's jurists in the Institutes. “Jurisprudentia,” it assures us, “est divinarum atque humanarum rerum notitia, justi atque injusti scientia.” Our aforesaid

Vocabulary 5.

jurisprudentia, (f.) *jurisprudence.*

atque, *and.*

notitia, (f.) *knowledge, notion, science.*

scientia, (f.) *science, knowledge.*

est, *is.*

humanarum, *of human,* (pl.)

justi, *of what is just.*

divinarum, *of divine,* (pl.)

rerum, *of things,* (pl.)

injusti, *of what is unjust.*

German legists put this into German thus: “Rechtsgelahrtheit ist die Kenntniss der gottlichen und menschlichen Dinge, die Wissenschaft des Rechten und des Unrechten.”

Vocabulary 6.

Rechtsgelahrtheit, (f.) *jurisprudence.*

der, *of the,* (plural.)

ist, *is.*

göttlichen, *of the divine, godly.*

Kenntniss, (f.) *knowledge.*

und, *and.*

26a

menschlichen, *of the human.*

des, *of the,* (singular.)

Dinge, (n.) *things.*

Rechten, (n.) *of the right, just.*

Wissenschaft, (f.) *science.*

Unrechten, *of the wrong, unjust.*

Harris gives the following as a translation of the Latin: “Jurisprudence is the knowledge of things divine and human, and the exact discernment of what is just and unjust.” Cooper's little better version sounds: “Jurisprudence is the knowledge of things divine and human; the science of what is just and unjust.” Is the German the best language for translation? Certainly, the Germans often seem the best translators. The expression “what is just and unjust” is but a clumsy rendering of the precise, felicitous original. Far better is the German, “des Rechten und des Unrechten.” We should say, “of what is just and what is unjust,” or “of the just and the unjust.” But, whatever may be thought of the translations here in question, the original of them assuredly ascribes too much to the science it characterizes. There are many things in heaven and earth not dreamed of in the law or in the science known as jurisprudence. There are things above and things below the jurist's cognizance. Hooker's celebrated rhapsody about law is not a definition.

Thus it runs: “Her seat is the bosom of God, and her voice the harmony of the world; all things in heaven and earth do her homage; the very least as feeling her care, and the greatest as not exempt from her power.”

True, in order to do justice to this language, it is necessary to remember what is taught by jurists, touching what they call the Law of Nature.

Here, again, Tribonian and his fellows may be our instructors. In the Institutes we read: “Jus naturale est, quod natura omnia animalia docuit: nam jus istud non humani generis proprium est, sed omnium animalium, quæ in cœlo, quæ in terra, quæ in mari, nascuntur.

Hinc descendit maris atque feminæ conjunctio, quom nos matrimonium appellamus: Hinc liberorum procreatio, hinc educatio. Videmus enim, cætera quoque animalia istius juris peritia censeri." The Englishing which Harris gives

Vocabulary 7.

naturale, (n.) *natural.*

animalia, *to animals.*

non, *not.*

proprium, *proper.*

animalium, *of animals.*

cœlo, *in heaven.*

nascuntur, *are born.*

maris, *of the man, of the husband.*

quam, *which.*

appellamus, *we call.*

educatio, (f.) *education.*

cætera, *the rest.*

juris, *of law.*

natura, (f. *nature.*

docuit, *has taught.*

humani, (f.) *the human.*

sed, *but.*

quæ, *which,* (pl.)

terra, *on earth.*

hinc, *hence.*

feminæ, *of the wife, of the woman.*

nos, *we.*

liberorum, (m.) *of children.*

videmus, *we perceive.*

quoque, *also.*

peritia, *skilled, having knowledge of.*

omnia, *to all,* (plural.)

istud, *this.*

generis, *the race, of the kind.*

omnium, *of all,* (pl.)

in, *in, on.*

mari, *in the sea.*

descendit, *descends.*

conjunctio, (f.) *conjunction, union.*

matrimonium, (n.) *matrimony.*

procreatio, (f.) *procreation.*

enim, *for.*

istius, *of this.*

censeri, *judged, esteemed.*

us of this rather fanciful doctrine reads: “The law of nature is not a law to man only, but likewise to all other animals, whether they are produced on the earth, in the air, or in the waters. From hence proceeds the conjunction of male and female, which we among our own species style matrimony; 27a from whence arises the procreation of children, and our care in bringing them up. We perceive also, that the rest of the animal creatures are regarded as having a knowledge of this law, by which they are attracted.” Cooper does not mend this version much. His rendering reads thus: “The law of nature is a law not only to man, but likewise to all other animals, whether produced on the earth, in the air, or the waters. From hence proceeds that conjunction of male and female, which we denominate matrimony; hence the procreation and education of children. We perceive also, that other animals are considered as having some knowledge of this law.”

Infinitely better is the German reading for which we are indebted to the associated jurists, who as already noticed, translated into their modern-tongue the whole body of the Civil Law, connected with the name of Justinian. Here is that superior version: “Naturrecht heist dasjenige, welches die Natur allen Gescöhpfe lehrte; denn dieses Recht ist nicht allein

den Menschen eigenthümlich, sondern allen Thieren, die in der Luft, auf Erde, und im Meere entstehen. Hieraus entspringt die Verbindung des Mannes mit dem Weibe, die wir Ehe nennen, die Erzeugung der Kinder und deren Erziehung; denn wir wissen, dass man die ubrigen Gescöphfe dieses Recht auch für kündig hält." Without now dwelling on this doctrine, so far as

Vocabulary 8.

Naturrecht, (n.) *natural law.*

alle, *all* (pl.)

dieses, (n.) *this.*

den Menschen, *to men, to human beings.*

allen, *to all,* (pl.)

in, *in.*

auf, *upon, in, on.*

Meere, (Meer, n.) *sea, ocean.*

entspringt, *springs.*

Weibe, (Weib, n.) *wife, woman.*

nennen, *name, call.*

der Kinder, *of the children.*

man, *one.*

auch, *also, too.*

hält, *holds.*

heist, *is called.*

Geschöpfe, (n.) *creatures.*

nicht, *not.*

eigenthumlich, *peculiar, proper.*

Thieren, (n.) *to animals.*

der, *in the,* (sing.)

Erde, *earth.*

entstehen, *arise, are born.*

Verbindung, *connection, union, conjunction, binding.*

wir, *we.*

Erziehung, *education.*

wissen, *know.*

übrigen, *rest, other,* (pl.)

für, for.

Natur, (f.) *nature.*

lehrte, *taught.*

allein, *only, merely.*

sondern, *but.*

die, *the,* (pl.)

Luft, (f.) *air.*

im, *in the.*

hieraus, *out of this, hence.*

des Mannes, *of the man, of the husband.*

Ehe, *marriage.*

Erzeugung, *procreation.*

dass, *that.*

Geschöpf, *creature.*

Kündig, *acquainted with, skilled in.*

it ascribes to the animals below our zoologic rank a knowledge of the so-called law of nature, let us, returning to the rhapsody of Hooker, take into consideration, that the whole universe is often said to be law-governed, in matter as in mind.

A long-ago commenced but still unfinished *Legal Catechism* yields the following explanation, made by the composer of the present offering to Readers:

“ *Question.* Law in general has been called a rule of action, prescribed 28a by an authority which one is compelled to obey. Is that definition satisfactory?

“ *Answer.* The word *prescribed* seems exceptionable, that which is prescribed being, according to the strictest reading, a thing fore- *written,* while we know that there are laws *without writing.*

“ *Question.* Are words essential to the form of a law?

“ *Answer.* They are not. Sufficient is it that a law be *laid down,* as indeed the etymology of its name imports; and it may be laid down in idea merely. Much of what we call the common law exists in contemplation only.

“ *Question.* Can you give a short description of the common law?

“ *Answer.* The common law arose in England. It was brought to the colonies, which were destined to become known as the United States, by the first English settlers in this country, and it has been modified in the United States by the habits, manners, ideas, institutions and laws of our people. It is chiefly evidenced by the reports of cases decided by the courts.

“ *Question.* Has it not been called judicial legislation?

“ *Answer.* Yes, but not correctly. Courts do not make law; they only ascertain it, and, in applying, declare its requirements. The decisions of the courts are merely *evidence of law.* ”

To this I have elsewhere subjoined:

“Perhaps, it is allowable to say that even acts of Legislation are no more than evidence of Law. It is the *sense,* the *meaning* of the language in a legislative act, that is to have the force of law. The well known rules of constitutional and statutory construction might be

here appealed to; but no reference to them is necessary. Every legist comprehends that when the meaning of the legislature evidently varies from its language, not the language but the meaning, is to have the force of law.

“Nevertheless, the legal interest of Law in Language is extremely great and various; and it is remarkable that Legists generally do not take greater interest than they actually take in certain portions of Linguistics.”

29

III.

THE FRENCH has been examined very carefully by typonomic studies I have lately made with You; and You, as Pupil of the Ernest Institute, learned, long ago, the special interest which Nomologians may find in many aspects of that Language, of its Literature, and of the remarkable People, to whom they belong. But, now, my special objects lead me to discourse a little of the Language You have heard me call “my other Tongue,” when I have made comparison and contrast of it with our well-beloved Mother-Tongue.

The German language has been very much considered in the Ernest Institute, because of certain long-ago quite settled views and sentiments of mine. I deem that Idiom of special interest to all Americans.

The *Cincinnati Volksblatt* said—I think in 1868 or in 1869—in noticing a contribution of mine:

“Der Verfasser ist in der Deutschen Literatur vollständig bewandert, und hat von jeher der geistigen Grösse der Deutschen Nation die verdiente Gerechtigkeit wiederfahren lassen. Der Ton der Geringschätzung und Verachtung, mit welchen so viele, verhaltnissmässig gebildete Deutsche von ihren eingeborenenen Mitbürgern sprechen, hat ihn daher schmerzlich berührt und zu dem von uns angetheilten Aufsatz veranlasst, welcher so manches Wahre enthält.”

The Illinois *Staatszeitung* followed in these terms:

“Im Cincinnati Volksblatt klagt sich ein geborener Amerikaner, R. B. Warden, (wenn wir nicht irren, früher Mitglied des obersten Staatsgerichtshofes von Ohio,) der ein sehr gutes und kräftiges Deutsch schreibt im komischernsten Ton über das Gegenstück zum Knownothingthum—die Verachtung, welche Deutsch gegen die Eingeborenen Amerikaner zeigen.’,

I have never flattered *any* element of our composite Nationality. I never was a skillful or a practised flatterer in any way. I shall not now attempt to flatter either Germans of Non-Germans, here or abroad. But I insist on all that I have ever said, betokening appreciation of the German Peoples and their Idioms. At the same time, I once more say, with emphasis:

“The German language does not perfectly reflect the German character. 30 Too many *savants* go too far in what they say about the mirror to be found in speech. No language perfectly expresses the characteristics of the people whom it ordinarily serves as an indicator of thought and feeling—none can be regarded as a faultless mirror of ethnical propensity and faculty.”

I have invited your attention to the fact, that Theodore Poesche and Charles Goepp composed, in literary partnership, more than thirty years ago, a largely named small book, (a) of an extremely interesting character. I read it very carefully, devoting not the least of my consideration to the following expressions:

(a) The New Rome; or, The United States of the World.

“Rome has left a legacy of her power, in her language, to all the nations that once owned her sway. The new Rome will universalize the tongue which ‘proclaimed liberty to the nations, and to the people thereof.’ The English language is manifestly destined for all mankind. At this day it is spoken in England by twenty-seven millions of people; the

Celtic idioms of Wales, the Scotch Highlanders, and Ireland, are dead or dying. The English colonies unite in adopting the parent tongue, not even excepting Canada, which, in its origin, was exclusively French. In India, one hundred and twenty millions of souls are learning it. A new England is grown up in Australia. In the United States, however, the process is most interesting; here the English is the received organ of intercourse among twenty-five millions of people, of the most heterogeneous extraction. Spanish, French, Dutch, and German are compelled to give way before it. Its onward progress is, of course, as rapid as that of the American people. It leads the way in the Sandwich Islands, and the Chinese are learning it in California, to carry it to the Celestial Empire. No language on earth receives so much attention from foreigners as the English; some millions of emigrants in the United States are bent upon acquiring it. In Germany, the study of English, until within the last five years, was limited, and bore no proportion to that of the French. At present it receives close attention from all the friends of freedom, and from all who desire to emigrate, the French having been cast into the shade. The number of those who converse in this idiom is now estimated at seventy millions, while a hundred years ago it was just seven millions, a progress surely without a parallel. None of the languages of civilized Europe is used by so many individuals as this. The English literature already exerts an over-powering influence over all the other literatures of the world. *Nothing is more certain than that the English language will extend over all the earth, and will very shortly become the common medium of thought—the language of the world.* ”

Subjoined to this prophetic inculcation is what purports to be a translation of language used by Jacob Grimm in 31 his famous essay *Ueber den Ursprung der Sprache.* Thus it runs:

“Of all the modern idioms, none has derived from the very surrender and demolition of the old laws of tone, from the almost entire disuse of inflection, a greater force and power than the English; and the unconfined fullness of its medium tones gives it an essential command of expression, such as never yet fell to the lot of a human tongue. Its entire highly intellectual and happy design and finish are the product of a marvellous alliance of

the two finest languages of later Europe, the Romanic and the Germanic, which, as is well known, have divided the field in such a manner that the sensuous foundation is taken from the latter, while the former has furnished the superstructure of intellectual abstractions. In point of wealth, balance, and sinewy knitness, no living language will bear comparison with it. Yes, the English, not accidentally the mother and the nurse of the greatest poetical genius of modern times, in contradistinction to ancient classic art—I of course refer to none other than Shakespeare—is fully entitled to the dignity of a World's language, and seems destined, like the people who call it theirs, to govern, even in a greater degree than at present, at every corner of the earth."

Commenting on this passage, I have elsewhere said, and I may properly repeat:

"As far as it goes, the foregoing paragraph faithfully presents the thoughts of Grimm, although it transposes somewhat. But for ample reasons, I desire to place in juxtaposition with it the passage it purports to translate, and to give some added words of Grimm. I use the sixth Berlin edition, which I sent for in 1869, if I remember rightly. Grimm, then, says:

"'Keine unter allen neueren sprachen hat gerade durch das aufgeben und zerrütten alter lautgesetze, durch den wegfall beinahe sämmtlicher flexionen eine gröszere kraft und stärke empfangen als die englische und von ihrer nicht einmal lehrbaren, nur lernbaren fülle freier mittletöne ist eine wesentliche gewalt des ausdrucks abhängig geworden, wie sie vielleicht noch nie einer andern menschlichen zunge zu gebote stand. ihre ganze überaus geistige, wunderbar geglückte anlage und durchbildung war hervorgegangen aus einer überraschenden vermählung der beiden edelsten sprachen des spätern Europas, der germanischen und romanischen, und bekannt ist wie im englischen sich beide zu einander verhalten, indem jene bei weitem die sinnliche grundlage hergab, dese die geistige begriffe zuführte. ja die englische sprache, von der nicht umsonst auch der gröste und überlegenste dichter der neuen zeit im gegensatz zur classichen alten poesie, ich kann natürlich nur Shakspeare meinen, gezeugt und getragen worden ist, sie darf mit vollem recht eine weltsprache heiszen und scheint gleich dem englischen volk ausersehen

künftig noch in hoherem masze an allen ended der erde zu walten. denn an reichthum, vernunft und gedrängter fuge läszt sich keine aller noch lebenden sprachen ihr an die seite setzen, *auch unsre Deutsche nicht,* die zerrissen ist wie wir selbst zerrissen sind, und erst manche gebrechen von sich abschütteln müste ehe sie kühn 32 mit in die laufbahn träte; doch einige wohlthuende erinnerungen wird sie darbieten und wer möchte ihr die hofnung abschneiden? die schönheit menschlicher sprache blühte nicht im amfang, sondern im ihrer mitte; ihre reichste frucht wird sie erst einmal in der zukunft darreichen.'

"The German reader, on comparing Poesche and Goepp's translation with the extract I have made directly from the text of Grimm, will notice, first, an apparent transposition, second, an apparent omission. Was there really a transposition on the part of the translator? Did the latter really omit an important passage? Possibly, changes made by Grimm himself, and a consequent difference between the first edition and the last, would be ascertained by full investigation.

"This, indeed, seems highly probable. The apparently omitted passage is one which seems to me a new proof that, even when the head is perfectly convinced, the heart may be entirely unpersuaded. The conclusion of the passage I have quoted from Grimm's famous Essay, in the original, indicates that he has not yet quite convinced his heart that his mother-tongue is inferior to the mother-tongue of Shakspeare."

Some of his compatriot dissentients have called him " *British-gesinnt.* "

The German fondness for the German tongue has had some very thorough-going expressions.

Luther, for example, said:

"Die Deutschen allzumahl haben Einfalt and Wahrheit lieber denn Franzosen, Italiäner und Spanier, welches auch die Sprache und das Ausreden genugsam anzeigt; da diese läppisch und zischend die Worte ausprechen. Darum sagt man von den Franzosen;

sie schreiben anders denn sie reden, und reden anders denn sie es meinen. Aber die Deutsche Sprache ist die allervollkommenste, hat viel Aehnlichkeit mit der Griechischen."

And not long ago, a German writer let himself off with the pen as follows:

"Welche Sprache darf sich mit der Deutschen messen, welche ist so reich und mächtig, so muthig und anmuthig, so schön und mild als unsere? Sie hat tausend Farben und warme Schatten. Sie hat ein Wort für das kleinste Bedürfnisz der Minute und ein Wort für das bodenlose Gefühl, das keine Ewigkeit ausschöpft. Sie ist stark in der Noth, geschmeidig in Gefahren, schrecklich wenn sie zürnt, weich in ihrem Mitleid und beweglich zu jedem Unternehmen. Sie ist die treue Dolmetscherin aller Sprachen, die Himmel und Erde, Luft und Wasser sprechen."

Unto this the *Deutscher-Sprachwart,* in January, 1867, added:

"Was der rollende Donner grollt, was die kosende Liebe tandelt, was der lärmende Tag schwatzt und die fleiszige Nacht brütet; was das Morgenroth 33 purpurfarben, gold und silbern malt; was der ernste Herrscher auf dem Throne des Gedankens sinnt; was das Mädchen plaudert, die stille Quelle murmelt und die geifernde Schlange pfeift; wann der muntere Knabe hüpft und jauchzt und der alte Philosoph sein schweres Ich setzt und spricht: Ich bin Ich—: alles, alles übersetzt und erklärt sie uns verständlich; jedes anvertraute Wort überbringt sie uns reicher und geschmückter, als es ihr überliefert worden ist."

Now, let us try to do full justice to the German tongue. Says Henry Thomas Buckle, in his way:

"As to the Germans, it is undoubtedly true that since the middle of the eighteenth century they have produced a greater number of profound thinkers than any other country; I might perhaps say, than all other countries put together."

Good enough! But our never-altogether-to-be-trusted Author adds to that good language:

“Their great authors address themselves, not to the country, but to each other. They are sure of a select and learned audience, and they use what, in reality, is a learned language; they turn their mother-tongue into a dialect, eloquent, indeed, and very powerful, bus so difficult, so subtle, and so full of complicated inversions, that to their own lower classes it is utterly incomprehensible.”

Commenting on the last-cited sentences, I have, elsewhere, presumed to say:

“Could nothing but my observations during intercourse with Cincinnati and Columbus Germans, cultivated and uncultivated, furnish reasons for rejecting this fine specimen of Buckleism, I would still feel bold to say: For all his learning, this man failed to find the typical distinctions of German literary labor. But I find his error quite suggestive.

“Charles Follen observes:

“‘Luther cannot be regarded as the father of the general language of his country; no more than he can be regarded as the father of the Reformation. He says himself:

“‘“I have not a distinct, peculiar kind of German, but I use the *common German language,* in order that the upper and lower countries may understand me.”’

“There have been German authors, *as well as other authors,* who were less desirous to be understood. There was a time when to deny all application to those words of Buckle would have been barely less absurd than it would be to follow Buckle generally. But, before that time, as we have seen, there was a period when the German writer strove to reach as many minds as possible, and now his efforts to popularize all the varietis of learning which may interest the people are remarkable. That the evil pointed out by Buckle never was so great as it appeared to him, the culture I have 34 found distributed to Ohio Germans and to

others will not suffer me to question. I might notice here the wide circulation in this country of German literary and scientific publications and of German-American printed matter.

“Buckle follows Laing's *Notes of a Traveler.* The foot-note quotations from that work, indeed, apparently sustain the text of Buckle; but such study of the subject as its great importance obviously orders, must convict both writers of exaggeration.

“I do not forget the undeniable *difficulty* of the German tongue. Some years ago, I thought of addressing to my fellow-citizens of German birth, a bilingual letter, containing among other things, these words: ‘Leaving pronunication out of view, it was easier for you to learn English than for me to learn German; and this is not wholly chargeable to my inferior ability to learn.’ I add: Even after learning German, the Englishman finds that even in writing your fine medium of thought, the practice that makes perfect will not even yield *grammatical* correctness as he hoped it would to a learner of the English.

“But, admitting all that ought to be admitted as to the great difficulty of the German language, we must still acknowledge its wonderful achievements in the way of what has been called popularization, and its ever deepening disposition to perfect its work in the same direction.

“Buckle adds to his already-quoted words the following:

“‘From this there have arisen some of the most marked peculiarities of German literature. For, being deprived of ordinary readers, it is cut off from the influence of ordinary prejudice, and hence it has displayed a boldness of inquiry, a recklessness in the pursuit of truth, and a disregard of traditional opinions, which entitle it to the highest praise. But on the other hand, this same circumstance has produced that absence of practical knowledge, and that indifference to material and physical interests, for which the German literature is justly censured. As a matter of course, all this has widened the original breach, and increased the distance which separates the great German thinkers from that dull and

plodding class, which, though it lies immediately beneath them, still remains uninfluenced by their knowledge, and uncheered by the glow and fire of their genius.

"'In America, on the other hand, we see a civilization precisely the reverse of this. We see a country, of which it has been truly said, that in no other are there so few men of great learning, and so few men of great ignorance. In Germany, the speculative classes and the practical classes are altogether disunited; in America, they are altogether fused.'

"This is not true. The speculative and practical classes are *not* altogether fused in the United States; and certainly, in Germany those classes are not altogether disunited.

"I have had three German partners in the practice of the Law, in each of whom there was incarnate a complete contradiction to the eminently Buckleian theory now under view."

The Ernest Institute does not devote too much consideration to the German Language.